

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BANKS v. US, 2012-5067

UNOPPOSED MOTION FOR LEAVE TO FILE APPENDIX OUT OF TIME

Appellants-Plaintiffs Banks et. al (“Banks”), by counsel, moves for leave to file appendix out of time, and respectfully states as follows:

1. On March 11, 2013, Banks moved for an extension of time of 30 days in which to file its reply brief, up to and including April 17, 2013.

2. Banks’ motion was granted, therefore the deadline for Banks to file its reply brief was April 17, 2013.

3. On April 9, 2013, Banks moved for a second extension of time, up to and including May 8, 2013 in which to file its reply brief.

4. On May 8, 2013, Banks motion for a second extension of time was still pending before this Court. Banks proceeded to file its reply brief on that date.

5. Throughout this process, counsel for Banks worked diligently to prepare the appendix for filing with this Court.

6. However, because Banks motion for a second extension of time was pending, Banks’ reply brief was not accepted for filing at that time. Therefore, as of May 8, 2013, the Banks’ reply brief was “tendered” but not “filed.”

7. Banks did not file the appendix in accordance with Fed. Cir. R. 30(a)(4). This rule provides “[t]he appellant must serve and file an appendix within 7 days after the last reply brief is served and filed.” Even though the appendix was complete and ready to be filed, Banks did not file the appendix within seven days

because Banks mistakenly understood the rule to require the reply brief be “filed” rather than “tendered.”

8. On June 6, 2013, this Court granted Banks’ pending motion, granting Banks’ motion for a second extension of time to file its reply brief on May 8, 2013.

9. On this Court’s docket, even though Banks’ reply brief was not accepted for filing until June 6, 2013, the reply brief is dated as filed on May 8, 2013.

10. Also on June 6, 2013, for the first time, the docket noted the appendix should be filed by May 20, 2013.

11. It was at this time that Banks discovered its inadvertent mistake.

12. Defendant has been notified of Banks’ intention to move for leave to file the appendix out of time and Defendant has no objection to this motion.

13. Granting this motion will not prejudice the Defendant. Rather, denying this motion will prejudice both Banks and the US, as this Court will be unable to review citations to the appendix found in both parties’ briefs.

14. Counsel for Banks has at all times exercised diligence to comply with the provisions and rules of this Court, and has not previously sought leave to file any documents out of time.

15. Banks’ Certificate of Interest is attached.

Dated: June 13, 2013

Respectfully submitted,

JOHN H. BANKS, et. al.

/s/ Mark E. Christensen

Attorney for Banks, et. al.

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BANKS v. U.S., 2012-5067

CERTIFICATE OF INTEREST

Counsel for the Appellants certifies the following:

1. The full name of every party represented by me is:

John H. and Mary E. Banks, Michael R. and Janice Anderson, Andrew C. Bodnar and Christine M. Zaj-Bodnar, Gregory R. and Candice C. Bovee, Frank H. Bunker, Richard R. and M. Lynn Carter, Donald R. and Gail L. Chapman, J. Thomas Conklin Trust, Gerard V. and Ruth Cosgrove as trustees of the Gerard V. Cosgrove and Ruth Cosgrove Living Trust, Marilyn J. Cunat, Marc and Mary Del Mariani, Ehret Michigan Trust, Victor J. and Frances B. Hovath Trust, George J. Gregule, Jr., Victoria Jackson aka Victoria Illsen, Hyun S. Jyung Trust, Robert J. and Patricia Kane, Frank F. and Charlotte D. Lahr, Richard Neuser, Robert S. and Pamela S. Pancoast, Dorothy A. Renner, as trustee of Dorothy Renner Trust, Leonard J. Smith, Kay F. Varga aka Kay F. Smith, Marcia Wineberg, Robert D. and Maria Melcher, Carolynne K. Morvis Trust, Craig D. and Cherie Okonski, Kent and Margaret Werger, Roger B. and Ann C. Wilschke, Country, L.L.C., Greenbriar Development, L. Richard and Nancy A. Marzke, Donald D. and Judith E. Miller, Notre Dame Path Condominium Association, Herzl Ragins, M.D., Elizabeth S. Errant aka Elizabeth Saphir, Bank one fka NBD Bank, N.A., Trustee of the Thelma C. McKay Trust.

2. The real party in interest represented by me is:

J. Thomas Conklin Trust – Thomas J. Conklin, Ehret Michigan Trust – Carole L. Ehret and Theodore L. Ehret, Victor J. and Frances B. Hovath Trust – Estate of Francis B. Hovath and Donna Peterson Frett.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party represented by me are: None.

4. The names of all law firms and the partners or associates that appeared for the party now represented by me in the trial court or expected to appear in this Court are:

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Dated: June 13, 2013

Respectfully submitted,

JOHN H. BANKS, et al.

By: /s/ Mark E. Christensen
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CERTIFICATE OF SERVICE

I certify that I have filed a copy of BANKS' UNOPPOSED MOTION FOR LEAVE TO FILE APPENDIX OUT OF TIME with the United States Court of Appeals for the Federal Circuit via EFC on this 13th day of June, 2013.

/s/ Mark E. Christensen
MARK E. CHRISTENSEN